

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:93-cr-034 (8)
also Case No. 3:04-cv-344

-vs- : District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz

WAYNE L. WHEAT,

Defendant.

ORDER UPON RECONSIDERATION

This case is before the Court on the Government's Motion to Reconsider Evidentiary Hearing and Rule on the Record (Doc. No. 1077). The United States points out that the Court is authorized to consider affidavits in lieu of live testimony under 28 U.S.C. §2246. However, the Court has a strong preference for live testimony because of credibility considerations. In this particular instance, witness Bowers is a Dayton resident and witness Norman has long since been ordered produced by writ of habeas corpus ad testificandum, so that reversing the decision to conduct an evidentiary hearing would not materially advance the convenience of any party.

Accordingly, upon reconsideration, the Court declines to reverse its decision to grant an evidentiary hearing. The United States is not bound to refrain from cross-examination by its stated plan in the Motion to Reconsider.

August 7, 2007.

s/ **Michael R. Merz**
Chief United States Magistrate Judge